

Appl. No. 10/630,502
Atty. Docket No. P-138
Resp. to Restriction: July 25, 2005
Customer No. 27752

Election with Traverse under 37 CFR § 1.143

The Office Action states that the restriction to one invention is required under 35 USC §121. Applicants respectfully traverse the Restriction Requirement because there is no serious burden placed on the Examiner to consider all claims.

The Examiner has required the Applicants to restrict the claims of the above captioned application. Specifically, the Examiner alleges that the application contains claims directed to three patentable inventions. The Examiner has designated claims 1-18 as Group I, Claims 19 to 23 as Group II, and Claims 24-30 as Group III.

Claims 1-18 are drawn to a method of treating a hairball or increasing fecal hair excretion in a mammal, wherein the polyol fatty acid polyester is utilized. Claims 19-23 are drawn to a composition comprising a polyol fatty acid polyester. Claims 24-30 are drawn to a pet food composition comprising a polyol fatty acid polyester.

Additionally, the Examiner requests that an election be made under 35 U.S.C. 121 to a single disclosed species. Particularly, the elected species should be to a specific polyol fatty acid polyester.

Under MPEP § 803, election/restriction is proper when both of the following criteria are met: (1) The inventions must be independent or distinct as claimed; and (2) There must be a serious burden on the Examiner if the restriction is not required. Applicants submit that the aforementioned method and compositions are so closely related that it would not present an undue burden on the Examiner to examine the art. Additionally, Applicants respectfully submit that any prior art search set up for a specific polyol fatty acid polyester will be coextensive with any search for any of the disclosed and claimed polyol fatty acid polyester of the present invention. Applicants respectfully submit that examination of the present application, as a single unrestricted application, would not be unduly burdensome on the Examiner because a thorough art search of all of the identified classes and subclasses could easily be performed in a single application.

For these reasons, Applicants submit that the restriction requirement applied to the above identified application is improper and should be withdrawn.

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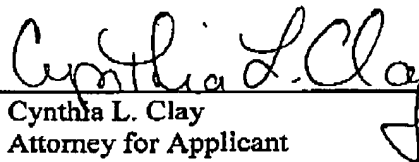
In view of the foregoing remarks, it is respectfully requested that the Examiner withdraw the requirement for restriction and allow Claims 1-30 to be prosecuted in the same application. Should the Examiner's restriction requirement not be withdrawn, Applicants hereby provisionally elect with traverse until final disposition of the elected claims, Group II which corresponds to current claims 19-23.

Applicants hereby provisionally elect in abeyance under 37 C.F.R. § 1.142(b) until final disposition of the elected claims, polyol fatty acid polyester as the sucrose ester of a mixture of fatty acids derived from cotton seed oil and a sucrose ester of behenic acid.

Conclusion

Applicants respectfully request the Examiner to withdraw the restriction requirement and request reconsideration of this application and allowance of Claims 1-30.

Respectfully submitted,

By 
Cynthia L. Clay
Attorney for Applicant
Registration No. 54,930
(513) 626-0575

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